

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

MAUREEN P. DOUGHERTY,)	
)	DOCKET NO.: PT-2002-10
Appellant,)	
)	
-vs.-)	FACTUAL BACKGROUND,
)	CONCLUSIONS OF LAW,
THE DEPARTMENT OF REVENUE)	ORDER and OPPORTUNITY
OF THE STATE OF MONTANA,)	<u>FOR JUDICIAL REVIEW</u>
)	
Respondent.)	

The above-entitled appeal was heard on June 18, 2003, in the City of Missoula, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law.

Maureen Dougherty (the Taxpayer) presented testimony in support of the appeal. The Department of Revenue (the DOR), represented by Attorney Michele Crepeau and Appraiser Mike Hartkorn, presented testimony in opposition to the appeal.

The duty of the Board is to determine the market value of the Taxpayer's property based on the preponderance of the evidence. The State of Montana defines "market value" as **MCA §15-8-111. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided. (2)(a) Market value is a value at which property would change hands between

a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having a reasonable knowledge of relevant facts.

The Taxpayer is the Appellant in this proceeding and therefore has the burden of proof. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the Taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. **(Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).**

Based on the evidence and testimony presented, the market values are \$24,499 for the land and \$98,801 for the improvements as set forth in the following opinion. The decision of the Missoula County Tax Appeal Board is affirmed.

FACTUAL BACKGROUND

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary. The record remained open for an extended period of time after the hearing to allow the DOR additional time to provide requested exhibits. In addition, the Taxpayer was

afforded an opportunity to supplement the record with written testimony in response to the DOR's exhibits.

2. The Board has jurisdiction over this matter in accordance with **§ 15-2-301 MCA**.

3. The property which is the subject of this appeal is described as:

Lot 8, Block 7, Mullan Trail Phase II and improvements located thereon.
Street address of 1845 Mullan Trail, Missoula, Montana, Missoula County.
Assessor #3185609, Geo Code #04-2199-14-1-05-25-0000.

4. For the current appraisal cycle the DOR appraised the subject property at \$24,499 for the land and \$98,801 for the improvements.

5. The Taxpayer appealed the DOR's value determination for the property to the Missoula County Tax Appeal Board (County Board), requesting the value be reduced to \$0.

The Taxpayer cited the following:

My property and home have been placed in the floodway recently. My taxes should be minimal or none at all until the flooding problem is fixed and my home is places out of the floodway. I can't sell my home or fix it if it sustains substantial damage.

6. In its November 4, 2002 decision, the County Board denied the Taxpayers appeal.

7. The Taxpayer appealed the County Board's decision to this Board on November 10, 2002. The taxpayer cited the following:

On my 1999 assessment notice, the 1997 reappraisal value of my land and improvements was listed as \$128,900. The revised assessment after I

requested it due to major flooding; this 1997 reappraisal value was 115,200. My 2002 assessment of \$123,300 is an increase from my revised 1999/1997 assessment. This should have been decreased since my home has been placed in the floodway in 2001. When I bought my home on 3/31/94 my home was not in the floodplain. The 2002 assessment is unfair and unjust.

STATEMENT OF THE ISSUE

The DOR's appraised value is established upon pre-1996 market data and placed on the tax rolls in 1997. The subject property was determined to be located within the floodway in 2001. The issue before the Board is market value of the subject property as it is being impacted by the floodway. In addition, the DOR revised the market value of the improvements based upon a corrected area of finished basement.

TAXPAYER'S CONTENTIONS

The Taxpayer requested the value be \$0 before the CTAB. The Taxpayer modified the value request to reflect 50% of the DOR's appraisal, or \$61,650 (Land - \$12,249.50; Improvements - \$49,400.50) or what this Board deemed appropriate.

Taxpayer's Exhibit #1 is the warranty deed for the subject property dated March 31, 1994.

Taxpayer's Exhibit #2 is titled "Flood Insurance", for lending purposes. The document is dated March 10, 1994 and the emphasis of the exhibit is:

Section 1. (Not in flood hazard area)

The property that will secure the loan is not located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards. Therefore, no special flood hazard insurance is necessary.

Taxpayer's Exhibit #3 is a letter from Brian Maiorano, Floodplain Administrator, Missoula Office of Planning & Grants. The letter is dated October 19, 2001. Summarized, the Exhibit states the following:

In 1999, based on information developed during the lawsuit that followed the 1997 flood, we estimated that most or all of the homes in Mullan Trail were in the 100-year floodplain. Homeowners were notified of that determination, as were all others who inquired about properties in the subdivision. We recommended that all homeowners in the subdivision consider purchasing flood insurance.

In September 2001, the Montana Department of Natural Resources and Conservation (DNRC) released a draft of a detailed flood study for lower Grant Creek. This study was conducted using methods more accurate than any of the previous studies. It shows that, in Mullan Trail, 44 properties are in the 100-year floodplain; another 17 are in the 500-year floodplain (see attached map). Furthermore, those homes in the 100-year floodplain are in the *floodway* portion of the floodplain. Local, state and federal regulations prohibit the ability to rebuild a home if it were substantially damaged during flood, fire, etc.

Since the installation of a corrective drainage system, the property has not experienced flooding. Regardless of the drainage system, the property is located within the 100-year floodplain and more importantly in the floodway; therefore the market value of the property has been adversely impacted. In addition, if the property were destroyed by fire or flooding it could not be rebuilt.

DOR'S CONTENTIONS

The DOR Exhibit A is the property record card (PRC) that contains information relative to the subject property. The PRC illustrates four modifications were made and subsequently changed the market value for the improvements. The modified

component is in bold. Summarized, this Exhibit illustrates the following:

Land Data

Valued on a per square foot basis		
Square Feet	\$ Per Square Foot	Land Value
19,994	\$1.23	\$24,499

Improvement Data

Year Built – 1993	Finished Basement Area – 352; (1,000)
3 Bed/2 Bath	Quality Grade – 5+- Above Average
Additional Fixtures – 0; (2)	Physical Condition – (5) – Good
1 st Floor Area (SF) – 1,322	Condition/Desirability/Utility (CDU) – Good; (Fair)
Basement Area – 1,281; (1,258)	
Replacement Cost New (RCN)	\$95,060
Percent Good	97
ECF	116
Total Cost of Improvements	110,180
Land Value	24,499
Total Property Value (Cost Approach)	\$134,679

SUMMARY OF VALUES

Final Value	Date	Reason
\$128,900	08/22/96	1 - Market
\$123,300	05/02/02	1 - Market

Based on DOR's testimony and the PRC, the DOR relied on the sales comparison approach or market approach to establish the value for the subject property in 1996 and again in 2002. Summarized, the Montana Comparable Sales that were Exhibit B at the County Board hearing are illustrated in the following two tables. The first table denotes the DOR's current value of \$123,300, with a CDU of "Fair". The second table denotes a market value of \$139,300, with a CDU indication of "Good".

11/01/02	MONTANA COMPARABLE SALES					
	SUBJECT	COMP 1	COMP 2	COMP 3	COMP 4	COMP 5
Neighborhood ID	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail
Land Description						
Total Acres	.45	.45	.45	.45	.45	.45
Dwelling Description						
# Stories	1	1	1	1	1	1
Style	Bi-level	Bi-level	Split level	Split level	Split level	Split level
Year Built	1993	1993	1993	1994	1993	1993
Basement	Full	Full	Full	Part	Full	Part
Bed/Fam/Tot/Bath/HF	03/1/07/2/0	03/1/07/2/0	03/1/06/2/0	03/1/06/3/0	03/1/06/2/0	03/1/07/2/0
Heat	Central	Central	Central	Central	Central	Central
Finished Basement	1,000	352	0	616	0	616
Grade	5+	5+	5+	5+	5+	5+
CDU	FR	GD	GD	GD	GD	GD
First Floor Area	1,322	1,322	1,304	1,296	1,304	1,296
2 nd Floor Area	0	0	0	0	0	0
Total Living Area	1,322	1,322	1,304	1,296	1,304	1,296
Attached Garage	624	624	672	676	672	550
Valuation						
Sale Date		3/94	8/95	6/94	3/94	3/94
Sale Price ¹		\$118,000	\$129,500	\$122,100	\$105,500	\$116,000
MRA Estimate ²	\$122,400					
Adjusted Sale		\$123,370	\$132,102	\$123,019	\$116,895	\$123,494
Comparability ³		102	102	104	104	105
Weighted Estimate	\$123,911					
Market Value	\$123,300					
Field Control Code Indicator	1					

11/01/02	MONTANA COMPARABLE SALES					
	SUBJECT	COMP 1	COMP 2	COMP 3	COMP 4	COMP 5
Neighborhood ID	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail	Mullan Trail
Land Description						
Total Acres	.45	.45	.45	.45	.45	.45
Dwelling Description						
# Stories	1	1	1	1	1	1
Style	Bi-level	Bi-level	Split level	Split level	Split level	Split level
Year Built	1993	1993	1993	1994	1993	1993
Basement	Full	Full	Full	Part	Full	Part
Bed/Fam/Tot/Bath/HF	03/1/07/2/0	03/1/07/2/0	03/1/06/2/0	03/1/06/3/0	03/1/06/2/0	03/1/07/2/0
Heat	Central	Central	Central	Central	Central	Central
Finished Basement	1,000	352	0	616	0	616
Grade	5+	5+	5+	5+	5+	5+
CDU	GD	GD	GD	GD	GD	GD
First Floor Area	1,322	1,322	1,304	1,296	1,304	1,296
2 nd Floor Area	0	0	0	0	0	0
Total Living Area	1,322	1,322	1,304	1,296	1,304	1,296
Attached Garage	624	624	672	676	672	550
Valuation						
Sale Date		3/94	8/95	6/94	3/94	3/94
Sale Price		\$118,000	\$129,500	\$122,100	\$105,500	\$116,000
MRA Estimate	\$138,501					
Adjusted Sale		\$139,431	\$148,162	\$139,080	\$132,955	\$139,499
Comparability		21	22	29	30	31
Weighted Estimate	\$140,440					
Market Value	\$139,300					
Field Control Code Indicator	1					

1 Actual sales price was obtained from the Realty Transfer Certificate (RTC).

2 Multiple Regression Analysis – A statistical calculation.

3A numerical comparability indicator.

It is the opinion of the DOR that when the property was designated to be within the floodway a CDU adjustment was warranted. Therefore, the CDU was adjusted from an indication of "good" to "fair" resulting in a lower market value.

Mr. Hartkorn testified that the PRC for the subject indicated that there was 352 square feet of finished basement area, when in fact it should have reflected 1,000 square feet of finished basement area. The PRC also indicates that two additional plumbing fixtures were added to the subject's appraisal.

BOARD'S DISCUSSION

The two issues the Board will address are the market value of the subject property and the alterations to the appraisal of the property in 2002.

The first issue is the market value of the subject property as of January 1, 1997 pursuant to **MCA, 15-7-111. Periodic revaluation of certain taxable property.** (1) *The department shall administer and supervise a program for the revaluation of all taxable property within classes three, four, and ten. All other property must be revalued annually. The revaluation of class three, four, and ten property is complete on December 31, 1996. The amount of the change in valuation from the 1996 base year for each property in classes three, four, and ten must be phased in each year at the rate*

of 25% of the change in valuation from December 31, 1998, to the appropriate percentage of taxable market value for each class (emphasis supplied).

There is no dispute that the subject property was designated to be within the 100-year floodplain and within the floodway in 2001. The Taxpayer requested a value of \$0 before the County Board and was denied. The Taxpayer modified her request before this Board to 50% of the DOR's value determination but failed to present the Board with any supporting market data. This Board is the finder of fact and the Taxpayer hasn't provided sufficient evidence to suggest a value of \$61,650 for the property. In fact the Court said in Larson v. State, 166 Mont. 313, 317, 661 P2d 44, 47 (1983), Tax appeal boards are particularly suited for settling disputes over the appropriate valuation of a given piece of property or a particular improvement, and the judiciary cannot properly interfere with that function. The DOR has a responsibility as well. The Court also said, The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).

Based upon the record, the market value has been modified twice since the original 1997 assessment notice was sent to the taxpayer:

1997 Assessment Notice	
Land Value	\$ 24,499
Improvement Value	\$104,401
Total Market Value	\$128,900
This market value indication is a product of statewide reappraisal.	

1999 Revised Assessment Notice	
Land Value	\$ 24,499
Improvement Value	\$ 90,701
Total Market Value	\$115,200
This market value adjustment was based upon a DOR adjustment to the value of the improvements subsequent to flooding.	

2002 Assessment Notice	
Land Value	\$ 24,499
Improvement Value	\$ 98,801
Total Market Value	\$123,300
Adjustments made to the property record card, i.e. CDU adjustment, addition of finished basement area and additional plumbing fixtures.	

The Board received no supporting evidence as to the revised value that occurred in 1999, but the DOR testified that the adjustment was a result of flooding. The Taxpayer testified that residents in Mullan Trail subdivision filed a lawsuit against the County, the developer and others as a result of flooding. For the Taxpayer, the lawsuit resulted in a cash settlement along with the installation of a dewatering system around the property. The Taxpayer testified that, since the installation of the drainage system, the property hasn't experienced flooding, but the property is still designated to be in the floodplain/floodway. The Board does not dispute that being in a floodplain/floodway has the

potential for adverse implications, but this Board cannot arbitrarily adjust the value without supporting market data. The Taxpayer testified that forty-four properties are being impacted by the floodway. If there have been market transactions that have occurred subsequent to the 2001 floodway determination, the sales should bear out any loss in value. In fact, the DOR disputes there is a loss in value and testified to a sale of a property within the floodway that suggests an appreciation in value. The Board left the record open to allow the DOR an opportunity to provide the sales data to support its position. The following table and discussion analyzes the sales presented at the hearing (#1, #2 & #3) and three sales presented as a post-hearing submission (#4, #5 & #6) of which all are currently located within the floodway:

Sale	#1/Subject	#2	#3	#4	#5	#6
Sale date	Mar-94	Mar-94	Jun-94	Jul-99	Feb-00	Jun-02
Sale price	\$118,000	\$116,000	\$122,100	\$129,500	\$143,000	\$130,000
Floodway at time of sale	No	No	No	No	No	Yes
1 st floor living area	1,322	1,296	1,296	1,110	1,232	1,110
Finished basement area	1,000	616	616	512	1,100	512
2002 corrections by DOR	Yes	Unknown	Unknown	Yes	Y	Yes
Sale price/1st floor living area	\$89.26	\$89.51	\$94.21	\$116.67	\$116.07	\$117.18

Sale #2 and Sale #3 are the same property. The property sold in March of 1994 for \$89.51 per square foot of first floor area and three months later for \$94.21 per square foot of first floor area. This transaction suggests an increase of

5.25% or 1.75% per month. Both of these transactions occurred prior to the designation of the floodway.

Sale #4 and Sale #5 are the same property. This property sold in July of 1999 for \$116.67 per square foot of first floor area and twenty-three months later for \$117.18 per square foot of first floor area. The first sale occurred prior to the floodway designation and the second subsequent to the floodway designation. This sale suggests no appreciation in value, which may be a result of the floodway. The DOR appraised the subject at \$92.57 per square foot of first floor area, which is less than sale #6 at \$117.18 per square foot of first floor area. Although the DOR's market data for the current appraisal cycle employed sales data prior to 1996, the 2002 sale (#6), does not suggest a dramatic loss in value as requested by the taxpayer. In fact the adjustment of the CDU from "Good" to "Fair" resulted in a reduction in value of \$16,000 (County Board Exhibit B).

The second issue is the modification of finished basement area from 352 square feet to 1,000 square feet.

Mr. Hartkorn testified when reviewing the subject subdivision for the upcoming 2003 statewide reappraisal, he discovered that the subject property's finished basement was 1,000 square feet rather than the 352 square feet as indicated on the PRC. Mr. Hartkorn testified that this revision was

done for other properties within the neighborhood as well. Mr. Hartkorn testimony was, *"...to try an get some uniformity in the whole neighborhood."* Even though the DOR was collecting information for the 2003 appraisal cycle, the law provides for correcting an erroneous assessment. **MCA, 15-8-601. Assessment revision -- conference for review.**

(1) (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

Based upon the record, the best indication of market value for the subject property for tax year 2002 is \$24,499 for the land and \$98,801 for the improvements as determined by the DOR.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. **§15-2-301 MCA.**
2. **§15-8-111 MCA. Assessment - market value standard - exceptions.** (1) All taxable property must be assessed at 100% of its market value except as otherwise provided.
(2) (a) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to

sell and both having reasonable knowledge of relevant facts. (b) If the department uses construction cost as one approximation of market value, the department shall fully consider reduction in value caused by depreciation, whether through physical depreciation, functional obsolescence, or economic obsolescence.

3. **§15-2-301 MCA, Appeal of county tax appeal board decisions.** (4) In connection with any appeal under this section, the state board is not bound by common law and statutory rules of evidence or rules of discovery and may affirm, reverse, or modify any decision.
4. It is true, as a general rule, that the appraisal of the Department of Revenue is presumed to be correct and that the taxpayer must overcome this presumption. The Department of Revenue should, however, bear a certain burden of providing documented evidence to support its assessed values. (Western Airlines, Inc., v. Catherine Michunovich et al., 149 Mont. 347, 428 P.2d 3, (1967)).
5. **§ MCA, 15-8-601. Assessment revision -- conference for review.** (a) Except as provided in subsection (1)(b), whenever the department discovers that any taxable property of any person has in any year escaped assessment, been erroneously assessed, or been omitted from taxation, the department may assess the property

provided that the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.

6. The Board finds that the evidence presented supports its conclusion that the decision of the Missoula County Tax Appeal Board be upheld.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the subject property shall be entered on the tax rolls of Missoula County by the local Department of Revenue office at the value of \$24,499 for the land and \$98,801 for the improvements. The appeal of the Taxpayer is denied.

Dated this the 8th day of July, 2003.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

GREGORY A. THORNQUIST, Chairman

JEREANN NELSON, Member

MICHAEL J. MULRONEY, Member

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NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 8th day of July, 2003, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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